

REMARKS

These remarks are submitted in reply to the Office Action dated January 15, 2008. Applicant respectfully requests reconsideration and further examination of the patent application under 37 C.F.R. § 1.111.

Claims 1 – 3, 7 - 11, 24 and 25 remain in the application. Claims 4 - 6 were previously cancelled. Based on the remarks herein, Applicant respectfully requests that the Examiner reconsider and withdraw all outstanding rejections.

I. The declaration under 37 CFR 1.132 filed 10/30/07 was considered insufficient to overcome the rejection of claims 1-11 and 24-25 based upon 35 USC 102(e) as set forth in the last Office action. The Office Action stated that MPEP 2136.04 notes that: Therefore, when the unclaimed subject matter of a reference is applicant's own invention, applicant may overcome a prima facie case based on the patent, U.S. patent application publication, or international application publication, by showing that the disclosure is a description of applicant's own previous work. Such a showing can be made by proving that the patentee, or the inventor(s) of the U.S. patent application publication or the international application publication, was associated with applicant (e.g. worked for the same company) and learned of applicant's invention from applicant. In re Mathews, 408 F.2d 1393, 161 USPQ 276 (CCPA 1969).

The Office Action further stated that the affidavit does not show the relationship between the applicant of the application and the patentees of the applied references, nor shows that the patentees learned of applicant's invention from the applicant.

Applicant respectfully submits that the applicant of the present invention is also an applicant of the cited patent. Thus, the relationship between the inventors is that is the same person. The affidavit clearly articulates that:

... inventorship of the present application and aforementioned patents is correct and that any invention disclosed but not claimed in the aforementioned cited references was derived by Affiant. In particular the claimed invention of the present application, if disclosed in the cited art, was derived by Ms. Sengupta.

In addition to the fact that the affiant and inventor in the cited art are the same person, Applicant is submitting with the present response a recorded assignment of the present application to Paratek Microwave, Inc. It is noted that the cited art as verified by the recorded assignment at the Patent Office is also assigned to Paratek Microwave, Inc. Also, the affidavit clearly states that the claimed invention if disclosed in the cited art was derived (i.e., learned from) affiant. A copy of the affidavit submitted from the last response is attached hereto to ensure we are discussing the same affidavit.

Applicant placed telephone call to Examiner Lopez and left a message on Thursday, May 29, 2008, to discuss the aforementioned issues, however as Applicant has not received a return call to date, the present response is being submitted.

With the clarification of the affidavit, Applicant respectfully submits that all outstanding rejections have been addressed and all remaining rejections have been traversed.

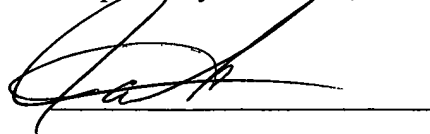
Conclusion

From the foregoing, Applicants respectfully submit that all of the stated grounds of rejections have been properly traversed, accommodated, or rendered moot. Accordingly, Applicants respectfully request that the application is in condition for allowance and respectfully request such action.

If the Examiner believes, for any reasons, that personal communication will expedite prosecution of this application the Examiner is invited to telephone the undersigned at the following number: 202-607-4607.

The USPTO is authorized to charge Deposit Account No. 502697 any fees associated with this response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Finn', is written over a horizontal line.

James S. Finn
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